IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

FRIDAY, THE 10TH AUGUST 2007 / 19TH SRAVANA 1929

Bail Appl..No. 4861 of 2007()

CRMP.858/2007 of DISTRICT COURT, KALPETTA
CRIME NO.291/07 OF S.BATHERY POLICE STATION

.....

PETITIONERS/ACCUSED

---

1. HARIDASAN, AGED 35 YEARS, S/O. GOPALAN CHETTY, MANKOMBU HOUSE, CHEERAL VILLAGE, S.BATHERY TALUK, WAYANAD DISTRICT.

2. SURENDRAN, AGED 31 YEARS, S/O. GOPALAN CHETTY, MANKOMBU HOUSE, CHEERAL VILLAGE, S.BATHERY TALUK, WAYANAD DISTRICT.

BY ADV. SRI.N.J.ANTONY

RESPONDENTS: COMPLAINANT/STATE

---

1. SUB INSPECTOR OF POLICE, SULTHAN BATHERY.

2. STATE OF KERALA, REPRESENTED BY PUBLIC PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM.

BY PUBLIC PROSECUTOR SRI. JAI GEORGE.

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 10/08/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R. BASANT, J.

B.A. No. 4861 OF 2007

Dated this the 10th day of August, 2007

ORDER

Application for anticipatory bail. The petitioners are the brothers of the deceased husband of the de facto complainant. The widow complained that the property which belonged to her deceased husband of which she is the legal heir in possession has been dealt with fraudulently by the petitioners and the trees in the property have been cut and removed without the knowledge or consent of the legal heir. A crime has been registered, inter alia, under Sec.379 of the IPC. Investigation is in progress. The petitioners apprehend imminent arrest.

2. The learned counsel for the petitioners submits that not the petitioners but their aged father was the person who entered into an agreement with a third party to cut and remove the trees. They have no role to play in the cutting and removal of the trees. In these circumstances, anticipatory bail

may be granted to the petitioners, it is urged. It is further submitted that the father of the petitioners is aged. He is terminally ill and is ailing. In these circumstances, it may be ensured that the petitioners are not arrested before he is discharged from the hospital.

3. This application is opposed by the learned Public Prosecutor. The learned Public Prosecutor submits that the attempt to put up the father as the person responsible for cutting and removing of the trees is without any bona fide. At any rate, this is not a fit case where the extraordinary equitable discretion under Sec.438 of the Cr.P.C. can and ought to be invoked in favour of the petitioners, submits the learned Public Prosecutor.

4. Having considered all the relevant inputs, I find merit in the opposition by the learned Public Prosecutor. I shall scrupulously avoid any detailed discussions on the acceptability of the allegations, the credibility of the data collected or the sustainability of the possible defences attempted by the petitioners. I am not at all satisfied that the powers under Sec.438 of the Cr.P.C. can and ought to be invoked in favour of the petitioners. This, I am satisfied, is an eminently fit case where the petitioners must be directed to resort to the ordinary and normal procedure of appearing before the Investigating

Officer or the learned Magistrate having jurisdiction. I have no reason to assume that the petitioners' application for regular bail to be filed by them when they so appear will not be considered by the learned Magistrate on merits, in accordance with law and expeditiously. No direction therefore appears to be necessary not to arrest the petitioners until their father is discharged from the hospital.

5. In the result, this bail application is dismissed; but with the observation that if the petitioners surrender before the learned Magistrate and seek bail, after giving sufficient prior notice to the Prosecutor in charge of the case, the learned Magistrate must proceed to pass appropriate orders on merits and expeditiously.

Sd/-

(R. BASANT, JUDGE)

Nan/

//true copy//

P.S. to Judge